

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 557 of 2000

with

CIVIL APPLICATION NO. 4601 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT
and
Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : YES
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

NATIONAL INSURANCE CO. LTD.

Versus

JAKHU RANMAL HETHVADIA

Appearance:

MS LILU K BHAYA for Petitioner
MR YS MANKAD for Respondent No. 1

CORAM : MR.JUSTICE J.N.BHATT
and
MR.JUSTICE K.M.MEHTA

Date of decision: 11/09/2000

Upon joint request the matter is taken up for final hearing.

2. This appeal under Section 173 of the Motor Vehicles Act, 1988, is directed against the interim amount of award granted by the Motor Accident Claims Tribunal, Kachchh, at Bhuj, exercising powers under Section 163A of the Motor Vehicles Act, 1988, whereby, the respondents heirs and legal representatives of the deceased Shamji Jakhu Hethvadia came to be awarded an amount of Rs. 4,36,500/- with running interest at the rate of 12% per annum from the date of application till payment by virtue of the order and award below, Exh. 6, dated, 12.1.2000 against the appellant and respondent No. 4 jointly and severally. The impugned order is recorded for temporary compensation in exercise of power under Section 163A of the new Act during the pendency of MACP No. 1095 of 1999 by the Motor Accident Claims Tribunal, Kachchh, at Bhuj.

3. It has been stated by the learned counsel for the appellant that the some Tribunals have started giving permission to the opponents to cross-examine the claimants / witnesses in so far as proof of income is concerned and no separate order is passed below the application which was, already, submitted to the Tribunal. No such copy is yet shown or produced. Again it is a matter of discretion.

4. Since the impugned order tantamounts to only interim compensation during the pendency of the main claim petition, which is required to be adjudicated upon after a full-fledged enquiry and after recording evidence, the order under challenge is subject to adjustment as per the final judgement and award that may be recorded in the pending main claim petition. We are, therefore, not inclined to interfere with the impugned order. However, it would be expedient to make necessary observation and direction so that the original main claim petition is in any way not intercepted 'en route' leaving the impugned order as final. Learned advocate Mr. Y.S. Mankad for the respondents has, rightly, assured that the original claimants shall not withdraw the pending main claim petition. The claimants shall file an undertaking before the Trial Court within four weeks from today stating that they shall pursue the main claim petition to its legal and logical end and they shall obtain a decision and award on merits and they shall not permit the impugned claim petition to be dismissed for default or withdrawn.

5. Pursuant to the interim direction, the appellant original opponent-Insurance Company has deposited a portion of the amount of the interim compensation as per the interim compensation order. The appellant-original opponent No. 3 in the main claim petition is directed to deposit the remaining amount due and payable under the impugned order below Exh. 6 under Section 163A of the Motor Vehicles Act within a period of two months from today before the Tribunal concerned. The amount of Rs. 25,000/- deposited before this Court under Section 173 of the Motor Vehicles Act is ordered to be transmitted to the Tribunal concerned by the Registry.

6. It will be open for the Tribunal to appropriately make apportionment of the amount of interim award amongst the claimants in light of the celebrated principles of law. As per earlier order 10% of deposited amount, direction for payment has been given. The Tribunal is further directed to pay remaining 10% out of 20% of the total deposit before the Tribunal by way of an account payee cheque to respondent Nos. 1 and 2 original claimants, heirs and legal representatives of the deceased Shamji Jakhu Hethvadia. The remaining amount like that 80% of the total amount that may be deposited or that may further be deposited shall be invested in a nationalised bank for a long period initially, for a period of five years and the amount of interest which shall accrue therefrom periodically, shall be payable to the respective claimants. In the event of expiry of the tenure of FDRs before the date of disposal of the main petition, the Tribunal shall extend the period of deposit till the main claim petition is heard. After the main petition is heard on merits, the amount of award shall be subject to this order, the amount under the interim order and also it will be subject to the proper directions in light of the celebrated principles of law so as to see that the amount of compensation is not being frittered away and the main object of compensation is preserved and observed.

7. In view of the aforesaid observations and directions, the appeal shall stand disposed of without entering into the merits thereof.

Since the First Appeal is disposed of, no orders are passed on the Civil Application.

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